

CRIMINAL APPLICATION NO. 4400 OF 2004.

Shri P.M. Pradhan for the applicant.
Shri A.S. Shitole, A.P.P. for the State.

ORAL ORDER:

2. The case of the prosecution is that the elder brother of the applicant, Satish Misal was murdered by unknown assailants while he was travelling in a car on a public road and several bullets were pumped into his body, as a result of which he succumbed to his injuries and died. The offence was registered at Swargate Police Station under C.R. No. 72 of 2003

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and it revealed in the said investigation that members of Chhota Rajan Gang were involved in the said murder. The said Satish Misal and Shri Mahindra @ Bablu Kavedia were partners and were carrying on business as contractors. Both were involved in several business ventures for a very long time. The said Satish Misal was also a Corporator of the Pune Municipal Corporation.

3. After murder of Mahindra Kavedia, original accused Nos.1 to 10 were arrested and were remanded to police custody from time to time. An application was made by the Sub-Inspector of Police on 29.9.1993 to the Additional Commissioner of Police (Crime) seeking approval for applying the provisions of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as the "MCOC" Act). In this proposal which was made, names of the original accused Nos. 1 to 10 were included and admittedly name of the present applicant was not included in the said proposal. On 6.10.2003 the Additional Commissioner of Police granted sanction to investigate the offence under section 3 of the MCOC Act. On 9.10.2003 immediately after sanction to investigate was granted by the Additional Commissioner of Police, all the accused filed an application before the Judicial Magistrate, F.C., expressing their apprehension that they may be forced to sign false confession. This

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application was however, rejected. On 16.10.2003, a confessional statement of Gajanan Marane was recorded in which he has stated that the present applicant Dipak Misal was involved and was a brain behind the entire incident. The present applicant is the sitting Corporator of the Pune Municipal Corporation and is an active worker of Bharatiya Janata Party.

4. After confession of Gajanan Marane was recorded the applicant was arrested on 19.10.2003. Soon thereafter on 24.10.2003 the Commissioner of Police issued an order of sanction under section 23(2) of the MCOC Act, granting sanction to prosecute. Thereafter, on 14.1.2004 second sanction was issued by the Commissioner of Police and Additional Director General of Police, granting sanction to prosecute all the accused. In the said letter of sanction, sanction was specifically granted to prosecute the accused under section 23(2) for having committed an offence under section 3 of the MCOC Act. A charge-sheet has been filed on 16.1.2004. After application was filed by the applicant for bail, by order dated 3.4.2004, the Special Judge rejected the application filed by the applicant. Against the said order the present criminal application has been filed by the applicant.

5. The learned Counsel appearing on behalf of the

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applicant has submitted that by initial sanction which is granted by the Additional Commissioner of Police on 6.10.2003 sanction to investigate was granted only in respect of accused Nos. 1 to 10 and name of the present applicant did not figure in the said order. It was further submitted that sanction was granted under section 23 sub-clause (3) of the MCOC Act on 24.3.2003 and in the said order of sanction for the first time name of the present applicant was mentioned. It is submitted that since sanction was not granted to investigate against the present applicant under section 23(1), subsequent sanction granted under section 23(2) was clearly in violation of the provisions of section 23(1). It was submitted that this was a serious lacuna in the investigation and sanction to investigate and to prosecute under MCOC Act.

6. Learned Counsel for the applicant further submitted that so far as present applicant is concerned, there is no evidence to indicate that the applicant was either a member of the organised crime syndicate or he was involved in continuing unlawful activity or on behalf of such syndicate within the definition of section 2 of the MCOC Act. He submitted that the only C.R. which was registered against the applicant was in respect of an incident which had taken place in 1989, but cognizance was taken by the

police in 1998. He submitted that the said case was compounded after cognizance was taken in 1998. Learned Counsel for the applicant has submitted that the prosecution had not taken any steps in respect of the said offence from 1989 to 1998, though applicant was a sitting Corporator of the Pune Municipal Corporation and carrying on lawful business activities.

7. Learned Counsel for the applicant further submitted that the Special Judge had already included section 4 of the MCOC Act in the charge framed against the applicant though sanction to take cognizance was granted by the Additional Commissioner only in respect of section 3. He submitted that only evidence against the present applicant was in the nature of confessional statement of the co-accused Gajanan Marane which was recorded by the police. He submitted that the prosecution had tried all the intersections of the confession of the other accused and the present applicant, which showed that they were constantly in touch with each other. He submitted that this intersection was not of any assistance to the prosecution as Gajanan Marane was a cable operator and applicant was also having his own cable network business and even as cable operator he was constantly in touch with number of people and, therefore, said intersection itself did not indicate that there was

conspiracy to commit murder of said Mahindra Kavedia. Learned Counsel for the applicant further submitted that from the statement of widow of the deceased -Rajani Kavedia it would be seen that in the statement recorded on 2.10.2002 she has stated that her husband was receiving threatening calls from Mumbai and her husband used to inform her that he was receiving threats because he had tried to save life of Satish Misal. She has stated in her subsequent statement that her husband had informed her that he had enmity with the people in Mumbai and he had paid ransom amount to settle the matter. Learned Counsel for the applicant submitted that from this statement there was clear indication that the deceased had enmity with people who were from Mumbai. He submitted that no steps were taken by the investigating agency to find out whether persons from Mumbai had threatened the deceased. Learned Counsel for the applicant relied upon judgment of this Court in the case of **Ramakant Jamunasingh Singh vs. State of Maharashtra** reported in **2002 ALL MR (Cri.)1269**. He submitted that this Court had held in para 9 of the said judgment that the penal provision in the said Act would be invoked if the activities of the accused involved come within the definition of clauses (d), (e) and (f) of section 2(1) of the said Act. He submitted that from the charge sheet filed by the prosecution it would be clear that there was no material to show that the activities of

the accused-applicant herein fall within the definition of the said section. Learned Counsel for the applicant relied upon judgment of the Supreme Court in the case of **Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijja** reported in **AIR 1990 SC 1962**, wherein the Supreme Court has considered the duty cast on the Court to frame charge under section 227 and 228 of the Criminal Procedure Code. He also relied on an unreported judgment of this Court in the case of Sameer Madan Patil vs. The State of Maharashtra in Criminal Application No. 1381 of 2002 dated 29.1.2003 passed by the learned Single Judge of this Court (A.M. Khanvilkar, J.), wherein this Court after examining material on record came to the conclusion that the material did not show that the applicant in the said case was a member of organised crime gang and therefore, had granted bail to the applicant in the said case.

8. Learned A.P.P. for the State has submitted that sanction was granted by the Competent Authority to investigate in the said offence and merely because sanction to investigate in respect of the present applicant was not granted, it would not mean that there was violation of provisions of section 23(1)(a) and (b). He submitted that on 14.1.2004 sanction was granted by the Additional Director of Police and pursuant to the said sanction, the Special Judge had

taken cognizance of the offence under the provisions of the MCOC Act. He submitted that there was, therefore, no breach of provisions of section 23 regarding cognizance or investigation in to the offence.

9. The learned A.P.P. has relied upon the chart which indicates that all the accused were involved in number of offences during the past 10 years. So far as present applicant is concerned, 2 cases were filed in 1987, 1 case was filed in 1999; 2 cases in 1999; 1 case in 1993 under Bombay Police Act, 1 case was filed under section 504 and 506 (1) of the Indian Penal Code and 1 case was registered against the accused by Sahakar Nagar Police Station under section 380 read with 34 of the I.P.C. He submitted that so far as other accused are concerned they are constantly in touch with the present applicant and they were also involved in number of cases, which can be seen from the chart which was submitted to this Court. He submitted that the chart also indicates that the other accused were involved in some offences in the years 1999, 2001 and 2003. He submitted that the present applicant had given huge donations to the other accused who had organised Ganesh Mandal. All these facts clearly indicate that accused were working as a team and, therefore, they form organised crime syndicate. Learned A.P.P. submitted that name of the

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present applicant was revealed during the course of investigation and only after statement of Gajanan Marane was recorded the present applicant was arrested. He submitted that even assuming without admitting that the provisions of MCOC Act are not applicable to the said offences, even otherwise, the present applicant has been charged with serious offence and is charged with offence punishable under section 302 of the I.P.C. and, therefore, his application for bail was liable to be rejected.

10. So far as first submission made by the learned Counsel appearing on behalf of the applicant is concerned, regarding breach of section 23(1)(a) and (b) is concerned, I am unable to accept the submissions made by him. Section 23 of the MCOC Act reads as follows:

" 23. Cognizance of, and investigation into, an offence.

(1) Notwithstanding anything contained in the Code-

(a) no information about the commission of an offence of organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;

(b) no investigation of an offence under the provisions of this Act shall be carried out by a police officer below the rank of the Deputy Superintendent of Police.

(2) NO Special Court shall take cognizance of

any offence under this Act without the previous sanction of the police officer not below the rank of Additional Director General of Police."

From the perusal of the said section, it can be seen that the section speaks about cognizance of and investigation into, an offence. The provision does not contemplate investigation of an individual accused but of an offence. In the present case, proposal for giving sanction to investigate was sent by the Senior Inspector of Police Shri Jadhav to the Additional Commissioner of Police and the said sanction was granted to investigate into offence on 6.10.2003. In the said order of sanction, it is no doubt true that name of the present applicant is not mentioned. However, in my view, it would not mean that sanction to investigate was not granted by the Competent Authority. Therefore, there has been no breach of provisions of section 23(1)(a) and (b) of the Act as the section does not contemplate grant of individual sanction against individual accused but it contemplates grant of sanction to investigate into offences. Thereafter proposal was sent to grant sanction on 24.10.2003 and 14.1.2004.

11. In order to consider whether provisions of MCOC Act are prima facie attracted in the present case, so far as present applicant is concerned, it

would be necessary to take into consideration provisions of section 2(1) (d) and (f) of the Act which read as follows:

"2 Definitions-

(1) In this Act, unless the context otherwise requires, -

(d) continuing unlawful activity means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheet have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate of gang indulge in activities of organised crime.."

Thus, in order to show that accused is in organised crime syndicate it is to be established by the prosecution that the accused is a member of organised crime syndicate and he is involved continuously in the unlawful activity of organised crime syndicate. Section 3 is a penal section which provides for punishment for organised crime and lays down various parameters of the said offence. Section 4 is a penal section. A person can be punished for possessing unaccountable wealth on behalf of the member of the organised crime syndicate.

12. In the present case, the applicant is a Corporator of the Pune Municipal Corporation. Admittedly, he has been carrying on business for a long time independently and he is an income-tax payee and also filing income tax returns for number of years. From the chart submitted by the learned A.P.P. it would be seen that first 2 offences registered at Khadak Police Station are in respect of C.R. No. 56/87 under sections 292, 427, 451 of the I.P.C. The 2nd C.R. No. 57/87 is under section 110 of the Criminal Procedure Code. It is a chapter case and both the offences are prior to 10 years before the said Act came into effect and, therefore, cannot be of any assistance to the prosecution for the purposes of provisions of sections 2 and 3 of the said Act. The 3rd offence registered at C.R. No. 164/89 was in respect sections 324, 323, 341 read with section 34 of the I.P.C. The applicant was acquitted after matter was compounded between the parties. The 4th the offence registered at C.R. No.239/93 under section 37(3) and 135 of the Bombay Police Act. The offence No.5 is registered at C.R. N. 165/93 under same provisions of the Bombay Police Act. The 6th offence is registered at C.R. No.220/99 under section 504 and 506(1) of the I.P.C. and the last is also registered at C.R. No.102/2002 under section 380 r/w 34 of the I.P.C. The offences at sr.Nos. 5 and 6 are non-cognizable offences. In the last offence also,

accused was acquitted. Thus, from the record it can be seen that there is no offence pending against the present applicant and none of the offences indicate that the applicant was a member of organised crime syndicate as envisaged under section 2(1)(d) (e) and (f). So far as present case is concerned, the only evidence against the present applicant is in the form of confession of co-accused Gajanan Marane. Apart from this evidence, there is no other evidence directly connecting the present applicant. In view of these facts, in my view, prima facie there is no material to show that the applicant is involved as member of organised crime syndicate operating continuously in unlawful activity through organised crime syndicate and, therefore, does not fall within the definition of section 2 (1)(d)(e) and (f) of the Act. I am satisfied that prima facie, there are no reasonable grounds for coming to the conclusion that he is guilty of the offences punishable under this Act. The applicant is a sitting Corporator of the Pune Municipal Corporation. It was submitted by the learned A.P.P. that the applicant is likely to tamper with the evidence and on this count also application for bail will have to be rejected. So far as this apprehension is concerned, it can be taken care of by imposing conditions on the applicant.

13. Taking over all view of the matter, in my

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view, applicant is entitled to be released on bail. Even otherwise, applicant has remained in custody since 16.10.2003. Trial of the case is also not likely to commence in the near future. Applicant be released on bail in the sum of Rs. 25,000/- (twenty five thousand) with one or two sureties in the like amount. The applicant shall surrender his passport to the police. He shall not enter the limits of Pune Chinchwad city, pending trial. He shall give his new address to the Superintendent of Jail before he is released and shall report to nearest police station from his new address twice in a month. Applicant however, will be permitted to enter the City of Pune for the purpose of attending the Court proceeding and the General Body Meetings of the Pune Municipal Corporation. With these directions, criminal application is allowed.

14. Parties to act on authenticated copy of this order.
